

Internal Revenue Service
memorandum

CC:TL:TS

WCSABIN

date: SEP 9 1988

TL-N-6859-88

to: District Counsel, Laguna Niguel CC:W:LN
ATTN: Stephen Staker

from: Director, Tax Litigation Division CC:TL

subject: TEFRA and Bankruptcy

This technical advice is in response to your request for post review of your memorandum, dated May 27, 1988, to the Chief of your District's Planning and Special Programs Branch.

ISSUES

1) Does the bankruptcy of a taxpayer extend the period of time during which the Commissioner may issue a statutory notice of deficiency?

2) What is the effect of the TEFRA partnership audit procedures on this issue?

CONCLUSIONS

1) The law is still uncertain. The litigating position of this Division remains the same as always, that the bankruptcy of a taxpayer does extend the period during which the Commissioner may issue a statutory notice of deficiency, although the Commissioner is strongly urged to issue notices within the normal three year period and not to rely on this extension.

2) When a TEFRA partner declares bankruptcy his partnership items convert to non-partnership items. The law in the area is even more uncertain. The position of this Division is that the partner's bankruptcy similarly extends the period during which the Commissioner may issue a statutory notice of deficiency, although here too the Commissioner is strongly advised not to rely on this extension if all possible.

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DISCUSSION

I. INTRODUCTION

The framing of the issues above blurs a technical point for the sake of rhetorical clarity. The two questions as stated regard extensions of the period of time during which the Commissioner may issue notices of deficiency. From a technical standpoint this is imprecise. Of course, there is no statutory period for issuing notices of deficiency, much less is there an extension of that period. Rather, the Code provides for a period of limitations on the right to assess, § 6501, and various suspensions of that period, § 6503. And the Code provides for the issuance of a notice of deficiency, § 6212. But nowhere, however, does the Code specifically provide when a notice of deficiency must be issued. Instead, the clear implication of the statutory framework is that a notice must be mailed within the assessments period, see §§ 6503(a)(1) and 6213(a) and Treas. Reg. § 301.6501-1(b). Thus, the remainder of this memorandum refers to suspensions of the period of assessment. However, the effect of a suspension of the period for assessment can be an extension of the period during which a notice of deficiency can be issued.

II. BANKRUPT TAXPAYER

Your memorandum of May 27, 1988 was in response to an inquiry regarding the continuing applicability of an earlier memorandum written by Mr. Taylor. Mr. Taylor's memorandum, dated Feb. 3, 1987, was sent to the 30/90 Bankruptcy Advisor.

The background to this inquiry is the three year period of limitations on assessment and collection of taxes set out by § 6501(a). This period is suspended when a taxpayer files for bankruptcy relief, and remains suspended so long as the taxpayer is in bankruptcy, § 6503(i). A long-standing question has been whether this "suspension subsection" suspends the period of limitations for taxes subject to deficiency procedures before a notice of deficiency is issued. Since 11 USC (b)(9) specifically excepts issuance of a notice of deficiency from the automatic stay provisions, an argument might be made that the suspension subsection only applies to assessments of taxes after a notice of deficiency is issued. Our litigating position has been and still is that § 6503(i) suspends the period of limitations on all taxes, regardless of whether the notice has been issued. A Litigation Guideline Memorandum, No. GL-28, was issued by the General Litigation Division on February 19, 1986, which describes this issue and our litigating position in greater detail.

Mr. Taylor's memorandum of Feb. 3, 1987 discussed this issue with reference to an amendment to IRM 4583.2(6). The manual does not contain a section with that designation any longer, ^{1/} but Mr. Taylor's memorandum clearly summarized the effect of the amendment. Apparently, the amended version of the manual provided that issuance of notices of deficiency should not rely on the existence of a suspension of the period of limitations for a bankrupt taxpayer. The memo correctly noted that this was "essentially precautionary" and summarized the litigating position as described above.

As your memorandum of May 27, 1988 states, this advice is still valid. Furthermore, the current version of the manual, IRM 4583.21(8) states the same thing:

Because a credible position can be advanced that the statute of limitations is not suspended until the issuance of a notice of deficiency, issuance of the notice of deficiency should not be delayed because of the fact of bankruptcy.

III. BANKRUPT TEFRA PARTNER

Your May 27, 1988 memorandum also correctly responded to the open-ended inquiry as to the effect of the TEFRA partnership provisions on the foregoing analysis of § 6501(i).

As you noted, bankruptcy converts a taxpayer's partnership items, into non-partnership items, Temp. Treas. Reg. § 301.6231(c)-7T.

As you also noted, § 6229(f) provides that the period for assessing converted non-partnership items shall not expire for one year after the conversion date.

Finally, you noted that the bankruptcy suspension subsection, § 6503(i), was not amended to include reference to the general period of limitations on partnership items set out by § 6229(a), even though § 6503(a) was amended to include such a reference.

From all this you concluded that the IRS has at least one year after a taxpayer files a petition for bankruptcy relief to issue a notice of deficiency. We agree. The only addition to

^{1/} Mr. Taylor's memorandum states that the amendment to which he refers was dated June, 1986. The current version of the manual does not contain a § 4583.2(6) but instead a § 4583.21(1)-(18), effective 12-22-86 which thoroughly discusses the effect of bankruptcy on audit procedures.

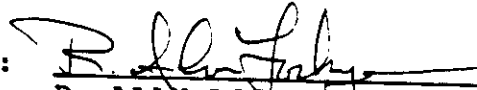
this analysis is that this branch has recently taken a more aggressive position regarding the relationship of § 6229 to § 6501. The new position is that § 6229 does not create a three year limit for assessing partnership items. Rather, § 6229 creates a three year cushion during which the limitations period of § 6501 cannot expire.

This interpretation, which is untested, results in a similar suspension of the period for assessing recently converted non-partnership items. This is because § 6503(i) suspends the running of § 6501(a) for all items, including partnership items and non-partnership items.

However, this position is quite uncertain and the District Director should not rely on it if at all possible. If you have any questions, please call Bill Sabin at FTS 566-3233.

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